

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

RICHARD HUGHES

46158 State Route 160

Vinton, Ohio 45686

Plaintiff,

v.

CRED X DEBT RECOVERY, LLC

4252 Ridge Lea, Suite 106

Amherst, New York 14226,

Defendant.

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Case No: 2:13-cv-254

JURY DEMAND REQUESTED

CIVIL COMPLAINT

(Unlawful Debt Collection Practices)

COMPLAINT

PLAINTIFF, Richard Hughes (Plaintiff), by his attorneys, KAHN AND ASSOCIATES, L.L.C., alleges the following against DEFENDANT, Cred X Debt Recovery, LLC (Defendant):

INTRODUCTION

1. Plaintiff's Complaint is based on the Fair Debt Collection Practices Act, *15 U.S.C. 1692 et seq.* (FDCPA). Plaintiff's Complaint states a common law cause of action for breach of contract under Ohio law.

JURISDICTION AND VENUE

2. Jurisdiction of this court arises pursuant to *15 U.S.C. 1692k(d)*, which states that such actions may be brought and heard before "any appropriate United States

- district court without regard to the amount in controversy,” and 28 *U.S.C. 1367* grants this court supplemental jurisdiction over the state claims contained therein.
3. Plaintiff’s claim for breach of contract arises out of the same claim or controversy as the FDCPA claims for which this court has original jurisdiction. Therefore, this court has supplemental jurisdiction over these claims pursuant to 28 *U.S.C. 1367(a)*.
 4. Because Defendant conducts business in Ohio, personal jurisdiction is established.
 5. Venue is proper pursuant to 28 *U.S.C. 1391(b)(2)*.

PARTIES

6. Plaintiff is a natural person who resides in the City of Vinton, Gallia County, Ohio and is allegedly obligated to pay a debt, and Plaintiff is a “consumer” as that term is defined by 15 *U.S.C. 1692a(3)*.
7. Pursuant to the definitions outlined in 15 *U.S.C. 1692a(1-6)*, Defendant is a debt collector and sought to collect a consumer debt from Plaintiff which was allegedly due and owing from Plaintiff, and Plaintiff is a consumer debtor.
8. Defendant is a New York Limited Liability Company and debt collector with an office in Amherst, New York.
9. Defendant uses instrumentalities of interstate commerce or the mails in a business the principal purpose of which is the collection of any debts, and/or regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another and is a "debt collector" as that term is

defined by *15 U.S.C. § 1692a(6)*.

10. Defendant is a collection agency that in the ordinary course of business, regularly, on behalf of itself or others, engages in debt collection.

FACTUAL ALLEGATIONS

11. Beginning approximately three months prior to, and continuing into at least May 2012, Defendant has placed nearly daily collection calls to Plaintiff at telephone number 740.669.0037, seeking an alleged consumer debtor that Defendant identifies as “Pamela Bowles.”
12. Plaintiff has informed Defendant numerous times that Plaintiff does not know of and is not related to “Pamela Bowles,” that this individual cannot be reached through his telephone number, and has demanded that Defendant cease calling, yet Defendant continued to place repeated calls to Plaintiff.
13. Defendant has placed repeated, frequent, and continuous calls to Plaintiff in an attempt to seek information related to an alleged consumer debtor with the intent of annoying or harassing the Plaintiff. Defendant’s intent to annoy or harass the Plaintiff is inferable from Defendant’s continued calls to Plaintiff even after being informed its calls were errant.

COUNT I

DEFENDANT VIOLATED THE FAIR DEBT COLLECTION PRACTICES ACT

14. Defendant violated the FDCPA based on the following:
 - a. Defendant violated *§1692b(3)* by, in a communication with a person other

than the consumer, communicating with that person more than once unless requested to do so by that person, or without the reasonable belief that the earlier response was erroneous or incomplete and that the person now has correct or complete location information.

b. Defendant violated §1692d by engaging in conduct the natural consequence of which is to harass, oppress, or abuse any person in connection with the collection of a debt.

c. Defendant violated §1692d(5) by causing a telephone to ring or engaging any person in telephone conversation repeatedly or continuously with intent to annoy, abuse, or harass any person at the called number.

WHEREFORE, Plaintiff, Richard Hughes, respectfully requests judgment be entered against Defendant, for the following:

15. Statutory damages of \$1000.00 pursuant to the Fair Debt Collection Practices Act, *15 U.S.C. 1692k*,

16. Costs and reasonable attorneys' fees pursuant to the Fair Debt Collection Practices Act, *15 U.S.C. 1692k*

17. Any other relief that this Honorable Court deems appropriate.

COUNT II BREACH OF CONTRACT

18. Plaintiff hereby reavers and incorporates by reference all statements and allegations previously set forth as if fully rewritten herein.

19. Plaintiff claims that Defendant entered into a settlement agreement with him to settle the underlying FDCPA claims referenced above and that the Defendant

breached the contract causing the Plaintiff damages or loss.

20. Kahn & Associates, LLC, a law firm representing Plaintiff, entered into the settlement agreement with the Law Offices of Michael D. Benson, a law firm representing Defendant.

21. Pursuant to the terms of that settlement agreement, Defendant agreed to pay to Plaintiff the sum of one-thousand dollars and no cents (\$1,000.00) and to cease any further collection activities on the Plaintiff's account. In exchange for the sum of \$1,000.00 and cessation of further collection activities on his account, Plaintiff agreed to execute a Release of his FDCPA claims against Defendant.

22. Plaintiff has performed all of the conditions, covenants and promises required to be performed in accordance with the terms and conditions of the contract, including executing a copy of the Release and returning the Release to counsel for Defendant.

23. Defendant breached its agreement with plaintiff by failing and refusing to perform in good faith the promise to pay the agreed upon settlement monies, thereby damaging the Plaintiff.

WHEREFORE, Plaintiff, Richard Hughes, respectfully requests judgment be entered against Defendant, for the following:

24. For compensatory damages;

25. For attorney's fees and for cost of suit incurred herein as a direct result of Defendant's breach;

26. For such other and further relief, at law or in equity, to which plaintiff may be justly entitled.

DEMAND FOR JURY TRIAL

Plaintiff, Richard Hughes, requests a jury trial in this case.

Respectfully submitted,

KAHN & ASSOCIATES, LLC

/s/ J. Daniel Scharville

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